

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELECTION INTEGRITY FUND AND
ONE NATION MICHIGAN,

Case No. 1:20-cv-00805

Plaintiffs,

HON. PAUL J. MALONEY

v

MAG. PHILLIP J. GREEN

GRETCHEN WHITMER, in her official
capacity as GOVERNOR OF THE
STATE OF MICHIGAN,

ORAL ARGUMENT REQUESTED

Defendant.

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DEFENDANT'S MOTION TO DISMISS IN LIEU OF AN ANSWER

Defendant Governor Gretchen Whitmer, through counsel, moves this Court to dismiss Plaintiffs' Complaint under Fed. R. Civ. P. 12(b)(6) and based upon the following:

1. This case involves challenges to E.O. 2020-160 (now E.O. 2020-176).

Plaintiffs allege that this order is unconstitutional and bring the following claims:

- (1) the E.O. is a violation of Plaintiffs' first amendment rights as a direct restriction

or as an unlawful time, place, and manner restriction; (2) the E.O. is a violation of the first amendment's overbreadth doctrine; (3) the E.O. is void for vagueness, and (4) the E.O. is a violation of Plaintiffs' first amendment rights as an unlawful prior restraint.

2. Plaintiffs' complaint should be dismissed for two reasons.

3. First, *Jacobson* gives the State broad authority to implement emergency measures when faced with a society-threatening epidemic—including the measures that Plaintiffs challenge as burdening their constitutional rights.

4. Second, even absent *Jacobson*'s deferential standard, Plaintiffs' constitutional challenges to the orders at issue in this case fail under a more generic constitutional analysis, and Plaintiffs otherwise fail to state a claim for relief for any of the alleged federal constitutional violations.

5. In further support of this motion, Defendant relies on the facts, law, and argument more fully developed in the attached brief in support.

6. Pursuant to W.D. Mich. L.R. 7.1(d), counsel for Defendant contacted counsel for Plaintiffs on September 18, 2020, and there was a conference in which counsel explained the nature of this motion and its legal basis and requested concurrence. Counsel for Defendant did not obtain concurrence, necessitating this motion.

For the reasons set forth in this motion and the attached brief in support, Defendant Governor Whitmer respectfully requests that the Court grant this motion, dismiss Plaintiffs' complaint in its entirety, and grant the Governor such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

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